



**Minutes for Meeting of
Thursday, July 12, 2012**

Item 1: Call to Order

Commission Chair Clyde Fuller called the meeting to order at approximately 5:00 p.m.

Item 2: Roll Call

Present – Commission Chair Fuller, Vice Chair William Howatt, Commissioners Lee Biddle, Deborah Cochran, Faye Detsky-Weil, John O’Neill, and Bud Wetzler

Outside Counsel Lisa Foster was present for Item 3 and advised the Commission during its deliberations.

Staff – Executive Director Stacey Fulhorst, General Counsel Christina Cameron, Program Manager Steve Ross, Senior Investigator Laurie Davis and Administrative Aide Jennifer Duarte

Item 3: Administrative Hearing: In re the Matter of B.D. Howard (Case No. 2010-42); Deliberation of the Commission

The Petitioner presented oral argument in connection with the allegations in the Final Administrative Complaint and the evidence presented by the parties at the hearing on May 11, 2012. The Respondent did not appear although he was properly notified by Commission staff. The Commission subsequently conducted deliberations in accordance with San Diego Municipal Code sections 26.0437 and 26.0438. Each Commissioner stated that he or she personally heard or read the testimony and reviewed the exhibits admitted into evidence at the hearing. Pursuant to San Diego Municipal Code section 26.0436(e), the hearing was recorded. In addition, a Peterson & Associates court reporter made a record of the hearing.

Commissioner Biddle stated that he supports the fine recommended by the Petitioner and the Administrative Law Judge. He expressed his view that

although the Respondent was a grassroots candidate, it was important to send a message that candidates may not ignore basic disclosure requirements.

Commissioner Wetzler noted that over 2,200 people, or approximately 17% of the district voters, supported the Respondent in the election. He expressed his opinion that the violations warranted a more substantial fine.

Commissioner Detsky-Weil commented that the Respondent had a cavalier attitude. She stated that she supports the recommended fine and added that the Respondent has not provided the public with information regarding where his campaign funds were spent.

Commissioner Howatt noted that the Respondent graduated from law school and signed the campaign statements under penalty of perjury. He described Respondent's conduct as pernicious and an outright obfuscation of his responsibilities as a candidate.

Motion: Accept findings and recommendations of the Administrative Law Judge with the exception of the fine amount
Moved/Seconded: Fuller/Howatt
Vote: Carried Unanimously

Count 1: Violation of SDMC § 27.2930 – Respondent failed to timely file a campaign statement covering the period from May 23, 2010, through June 3, 2010 (3rd pre-election reporting period).

Motion: Find that Respondent violated the law and impose a \$1,000 fine
Moved/Seconded: Wetzler/Biddle
Vote: Carried Unanimously

Count 2: Violation of SDMC § 27.2930 – Respondent failed to file a campaign statement covering the period from July 1, 2010, through December 31, 2010 (2nd semi-annual reporting period).

Motion: Find that Respondent violated the law and impose a \$1,000 fine
Moved/Seconded: Detsky-Weil/Biddle
Vote: Carried Unanimously

Count 3: Violation of SDMC § 27.2930 – Respondent filed a campaign statement covering the period from January 1, 2010, through March 17, 2010 (1st pre-election reporting period), and failed to disclose expenditures totaling \$828.42 made during the reporting period.

Motion: Find that Respondent violated the law and impose a \$500 fine
Moved/Seconded: Biddle/Cochran
Vote: Carried Unanimously

Count 4: Violation of SDMC § 27.2930 – Respondent filed original and amended campaign statements covering the period from March 18, 2010, through May 22, 2010 (2nd pre-election reporting period), and reported expenditures totaling \$110.00 that were never made according to bank account records and other supporting documents, and failed to disclose expenditures totaling \$1,809.62 that were made during the reporting period according to bank account records.

Motion: Find that Respondent violated the law and impose a \$1,000 fine
Moved/Seconded: Howatt/Cochran
Vote: Carried Unanimously

Count 5: Violation of SDMC § 27.2930 – Respondent filed a campaign statement covering the period from May 23, 2010, through June 3, 2010 (3rd pre-election reporting period), and disclosed an expenditure in the amount of \$500.00 that was never made according to bank account records and other supporting documents, and failed to disclose expenditures totaling \$270.77 that were made during the reporting period according to bank account records.

Motion: Find that Respondent violated the law and impose a \$1,000 fine
Moved/Seconded: Cochran/Howatt
Vote: Carried Unanimously

Count 6: Violation of SDMC § 27.2930 – Respondent filed original and amended campaign statements covering the period from June 4, 2010, through June 30, 2010 (1st 2010 semi-annual reporting period), and failed to disclose expenditures totaling \$261.34 made during the reporting period, and disclosed an ending cash balance of \$2,001.23 when bank records indicate the balance was actually \$6.25 as of June 30, 2010.

Motion: Find that Respondent violated the law and impose a \$2,000 fine
Moved/Seconded: Howatt/Detsky-Weil
Vote: Carried Unanimously

Count 7: Violation of SDMC § 27.2925 – Respondent failed to maintain records that describe the nature of goods or services associated with 39 expenditures totaling \$3,987.19.

Motion: Find that Respondent violated the law and impose a \$2,500 fine
Moved/Seconded: Detsky-Weil/Cochran
Vote: 4-3 (Fuller, Howatt and Wetzler voted nay)

Ms. Foster advised the Commission that the 4-3 vote was sufficient to support a finding that the Respondent violated the law, but not the amount of the fine which requires a concurring vote of 5 Commissioners.

Motion: Impose a \$5,000 fine
Moved/Seconded: Wetzler/None
Vote: Not applicable (failed for lack of second)

Motion: Impose a \$4,000 fine
Moved/Seconded: Howatt/Wetzler
Vote: Failed 2-5 (Biddle, Cochran, Detsky-Weil, Fuller, and O'Neill voted nay)

Motion: Impose a \$3,000 fine
Moved/Seconded: Detsky-Weil/Cochran
Vote: Failed 4-3 (Biddle, O'Neill and Wetzler voted nay)

Motion: Impose a \$2,500 fine
Moved/Seconded: Biddle/O'Neill
Vote: Carried 5-2 (Howatt and Wetzler voted nay)

Counts 8 & 9: Violation of SDMC § 27.2950 – Respondent accepted two contributions from non-individuals totaling \$350.00 on approximately March 9, 2010, and May 26, 2010.

Motion: Find that Respondent violated the law and impose a \$500 fine
Moved/Seconded: O'Neill/Wetzler
Vote: Carried 6-1 (Howatt voted nay)

Additional Directives:

Motion: Require respondent to file campaign statement covering the period from July 1, 2010, through December 31, 2010, amend all previous campaign statements as necessary to correct inaccuracies, and file all campaign statements necessary to terminate and close out his committee
Moved/Seconded: O'Neill/Howatt
Vote: Carried Unanimously

Motion: Forward the Proposed Decision of the Administrative Law Judge and the Ethics Commission's Administrative Enforcement Order to the State Bar of California
Moved/Seconded: Howatt/Cochran
Vote: Carried Unanimously

Commissioner Howatt noted that it was approximately 6:00 p.m. and the Respondent was still not present.

Motion: Impose a total fine of \$9,500 to be paid within 90 days of the issuance of the Administrative Enforcement Order
Moved/Seconded: Wetzler/Cochran
Vote: Carried Unanimously

The Ethics Commission's final decisions regarding the B.D. Howard matter are available for viewing on the Ethics Commission's website:

Administrative Enforcement Order:

<http://www.sandiego.gov/ethics/pdf/howardorder120713.pdf>

Resolution:

<http://www.sandiego.gov/ethics/pdf/howardreso120713.pdf>

Item 4: Approval of Commission Minutes

Approval of Ethics Commission Minutes of June 14, 2012

Commissioner Wetzler suggested amending the description of the motion for Decision Point 10 under Item 9 to better explain the Commission's direction. Director Fulhorst suggested expanding the verbiage to read "eliminate requirement that unlawful contributions that are not deposited be returned to the contributors." Commissioner Wetzler expressed support for this change.

Motion: Approved as amended
Moved/Seconded: Wetzler/Howatt
Vote: Carried Unanimously
Abstained: Detsky-Weil

Item 5: Non-Agenda Public Comment

None

Item 6: Commissioner Comment

None

Item 7: Executive Director Comment

Director Fulhorst announced that the August meeting will take place in Council Chambers because the Committee Room will be under construction.

Commissioner O'Neill asked if the previously-scheduled visit from the Chair of the FPPC was going to be rescheduled. Ms. Fulhorst indicated that she would check to see if the Chair plans to attend a San Diego Ethics Commission meeting in the near future.

Item 8: General Counsel Comment

None

Item 9: Proposed Amendments to Campaign Laws and Lobbying Laws

Director Fulhorst summarized the proposed amendments reflected in the strike-out version of the ordinances prepared by staff in accordance with the direction received from the Commission at the last meeting.

April Boling asked for staff clarification on several of the proposed amendments. With respect to section 27.2930(c), she asked if the language could be modified to ensure that the third pre-election filing applies only to those committees required to file first and second pre-election filings with the City Clerk. She also pointed out that the language in section 27.2938(b)(1) would prohibit the use of post-election contributions to pay for the costs of raising those contributions.

With respect to section 27.2946, Ms. Boling noted that it is not clear that City employees would include employees of City agencies. Ms. Fulhorst responded that staff would expand the definition of "City" in ECCO to include all City agencies as currently reflected in the Ethics Ordinance.

With respect to section 27.2952, Ms. Boling asked if the Commission considers a single member LLC to be the same as a sole proprietorship. Director Fulhorst explained that the Commission made a decision at the July meeting not to include single member LLCs designated as disregarded entities in the exception for sole proprietorships.

Ms. Boling commented that the \$10,000 threshold for major donor advertising disclosure in section 27.2975 could be problematic because the committee naming requirements apply to donors of \$50,000 or more. She suggested harmonizing the advertising and naming disclosures. The Commissioners generally expressed their support for this modification.

In addition to her requests for clarification, Ms Boling asked the Commission to recommend elimination of the third pre-election filing requirement. She expressed her opinion that this additional disclosure is unnecessary in light of

the fact that the law requires 24-hour disclosure of contributions of \$1,000 or more during this period.

After the Commissioners generally indicated that they did not have any further policy directions, Director Fulhorst indicated that staff would prepare revisions to the draft amendments to address Ms. Boling's requests for clarification, including language that would make committee naming rules more consistent with advertising rules for purposes of identifying sources of major funding.

Item 10: Staff Report Concerning Lobbying Activity 2011

Motion: Accept report
Moved/Seconded: O'Neill/Detsky-Weil
Vote: Carried Unanimously

Item 11: Adjourn to Closed Session.

Commission Chair Fuller adjourned the meeting to closed session at approximately 7:00 p.m. He stated the Commission would reconvene into open session following the conclusion of closed session in order to report any action taken during the closed session portion of the meeting.

Reconvene to Open Session

Commission Chair Fuller called the meeting back into open session at approximately 7:30 p.m.

Reporting Results of Closed Session Meeting of July 12, 2012

Ms. Cameron reported the results of the closed session meeting of July 12, 2012:

Item-1: Conference with Legal Counsel (21 potential matters)

Case No. 2012-27 - In Re: Alleged Failure to Timely Obtain Contributor Information and to Properly File Campaign Statements

Motion: Initiate Investigation
Moved/Seconded: O'Neill/Wetzler
Vote: Carried Unanimously

Case No. 2012-28 and 29 - In Re: Alleged Failure to Timely File Lobbyist Quarterly Disclosure Report

Motion: Initiate Investigation
Moved/Seconded: O'Neill/Detsky-Weil
Vote: Carried Unanimously

Case No. 2012-30 - In Re: Alleged Failure to Timely File Lobbyist Quarterly Disclosure Report and Failure to Disclose Campaign Contributions and Fundraising Activities

Motion: Initiate Investigation
Moved/Seconded: Wetzler/Howatt
Vote: Carried Unanimously
Recused: O'Neill

Case No. 2012-31 through 44 - In Re: Alleged Failure of Registered Lobbying Firms and Organization Lobbyists to Disclose Campaign Contributions and Fundraising Activities

Motion: Initiate Investigation
Moved/Seconded: Howatt/Detsky-Weil
Vote: Carried Unanimously
Recused: O'Neill

Case No. 2012-45 - In Re: Alleged Failure to Disqualify from Municipal Decision Affecting Economic Interests

Motion: Dismiss
Moved/Seconded: Howatt/O'Neill
Vote: Carried Unanimously

Case No. 2012-46 and 47- In Re: Alleged Acceptance of Gifts in Excess of Annual Limit

Motion: Dismiss
Moved/Seconded: Howatt/Detsky-Weil
Vote: Carried Unanimously

Item 2: Conference with Legal Counsel (1 potential matter)

Case No. 2012-02 - In Re: Alleged Failure to Timely File Lobbyist Disclosure Report and Failure to Disclose Campaign Contributions and Fundraising Activities

No reportable action

Item 3: Conference with Labor Negotiator

NOTE: Outside Counsel Lisa Foster replaced Christina Cameron as the Commission's legal counsel

No reportable action

Adjournment

The meeting adjourned at approximately 7:45 p.m.

[REDACTED]

Clyde Fuller, Commission Chair
Ethics Commission

[REDACTED]

Jennifer Duarte, Administrative Aide
Ethics Commission

THIS INFORMATION WILL BE MADE AVAILABLE IN ALTERNATIVE FORMATS UPON REQUEST.